

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) CR. NO. 2:06cr299-MEF
)
 SIMONETTA GARTH)

PLEA AGREEMENT

DEFENSE COUNSEL: DANIEL HAMM

ASSISTANT U.S. ATTORNEY: VERNE H. SPEIRS

COUNT AND STATUTE CHARGED:

Count 1 18 U.S.C. § 922(g)(1)
Felon in possession of a firearm.

COUNT PLEADING PURSUANT TO PLEA AGREEMENT:

Count 1 18 U.S.C. § 922(g)(1)

PENALTIES BY COUNT - MAXIMUM PENALTY:

Count 1 18 U.S.C. § 922(g)(1)
NMT 10Y or
NMT \$250,000 or both;
NMT 3Y SUP REL;
\$100 AF;
VWPA.

ELEMENTS OF THE OFFENSE:

18 U.S.C. § 922(g)(1)

First: The defendant knowingly possessed a firearm or ammunition in or affecting interstate commerce, as charged; and

Second: Before the defendant possessed the firearm or ammunition, the defendant had been convicted in a court of a crime punishable by imprisonment for a term in excess of one year, that is, a felony offense.

Verne H. Speirs, Assistant United States Attorney and Daniel Hamm, attorney for the Defendant, pursuant to Rules 11(c)(1)(A) and 11(c)(1)(C), Federal Rules of Criminal Procedure, as Amended, have, with the authorization of the undersigned Defendant, heretofore entered into discussions with a view towards reaching a pretrial conclusion of the charges pending in the Indictment herein and a Plea Agreement has been reached by said parties. The plea is being submitted to the Court pursuant to Federal Rules of Criminal Procedure 11(c)(1)(A) and 11(c)(1)(C), and the parties understand that, if the terms of the Plea Agreement are not accepted by the Court, the Defendant will be allowed to withdraw the Defendant's plea of guilty and proceed to trial. If the Court accepts this agreement, however, and Defendant thereafter breaches this agreement, her guilty plea may not be withdrawn.

GOVERNMENT'S PROVISIONS

1. Upon entering a plea of guilty by the Defendant to the offense charged in Count 1 of the Indictment, the attorney for the United States will do the following:

a. The United States will agree that a 2-level reduction in the applicable offense level pursuant to U.S.S.G. § 3El.1(a) for the Defendant's acceptance of responsibility is appropriate, so long as the Defendant does not obstruct justice or otherwise fail to accept responsibility for the offense

conduct. Should the United States find the Defendant assisted authorities in the investigation or prosecution of the Defendant's own misconduct by timely notifying authorities of the Defendant's intention to enter a plea of guilty, thereby permitting the United States to avoid preparing for trial and permitting the United States and this Court to allocate their resources efficiently, and if Defendant otherwise qualifies, the United States will move at sentencing for a further reduction of one level, pursuant to U.S.S.G. § 3E1.1(b). Determination of whether the Defendant met the Defendant's obligations to qualify for the reduction pursuant to U.S.S.G. § 3E1.1 is at the sole discretion of the United States.

b. The United States agrees, pursuant to Rule 11(c)(1)(A), Federal Rules of Criminal Procedure not to seek additional federal charges surrounding the events of December 1, 2006, at 1103 Lynwood Drive, Montgomery, Alabama. Specifically, the United States agrees not to seek additional charges for conspiracy to possess or conspiracy to distribute controlled substances; possession or distribution of controlled substances; or possession of firearms during and in relation to a drug trafficking offense. This agreement is strictly contingent upon defendant's full, truthful and complete cooperation as detailed in this plea agreement. If, in the opinion of the United States, defendant should breach this plea agreement, the United States

shall be released from this agreement and shall be free to prosecute defendant for any and all crimes it deems appropriate.

c. The parties agree that outside the Middle District of Alabama, the above paragraph (paragraph "b") shall have no force and effect upon any other investigating or prosecuting agency or jurisdiction of the United States. The above provisions shall have no force and effect upon the State of Alabama or any of its investigating or prosecuting entities.

d. The United States agrees, pursuant to U.S.S.G. 5K1.1 and/or Rule 35, Federal Rules of Criminal Procedure, that a downward departure or later adjustment in Defendant's applicable sentence as calculated by the United States Probation Office, Middle District of Alabama **may be** appropriate. Nevertheless, the extent of any downward departure or adjustment is at the **sole discretion** of the United States and will entirely depend upon the extent of Defendant's cooperation and assistance with the investigation and prosecution of any and all crimes of which the Defendant has knowledge. The ultimate amount of any downward departure or adjustment shall remain in the sole discretion of the United States.

e. The parties agree to the full application of the United States Sentencing Guidelines and do not seek to limit the application of any provision thereof.

2. The United States reserves the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses and the Defendant's background.

DEFENDANT'S PROVISIONS

3. The Defendant agrees to the following:

- a. To plead guilty to Count 1 of the Indictment.
- b. To forfeit all firearms in her possession.
- c. Not commit any State, local or federal offenses.
- d. Comply fully with the Cooperation Agreement detailed below.

COOPERATION AGREEMENT

4. The Defendant agrees to make a good faith effort to assist the United States in the investigation and prosecution of other persons (specifically including Courtney Colvin) involved in the illegal possession, manufacture or distribution of controlled substances or firearms; or any other illegal activity of which the Defendant has personal knowledge.

- a. The Defendant agrees to cooperate fully and testify truthfully against any and all persons as to whom she may have knowledge at grand jury, trial (criminal or civil), or whenever called upon to do so. The Defendant understands that this agreement does not require her to implicate any other particular individual or individuals nor to "make a case," rather it requires her to be truthful and to testify truthfully whenever

called upon. The Defendant agrees to make herself available for the review of documents and other materials and for interviews by law enforcement officers and attorneys for the United States upon reasonable request and to fully and truthfully respond to all questions asked of her by law enforcement officers and attorneys for the United States. She agrees to fully and truthfully disclose to the United States everything she knows about any and all documents and materials in her possession that relate to violations of federal firearms statutes and any other criminal violations, federal or State, in the Middle District of Alabama and elsewhere. The Defendant agrees to submit to a polygraph examination conducted by the United States if requested to do so.

b. Provided that the Defendant satisfies the terms of this plea agreement, any information that she truthfully discloses to the United States during the course of her cooperation, concerning related offenses, will not be used against her, directly or indirectly. The Defendant understands that this agreement does not bar her prosecution for capital felonies, perjury, false statements, and obstruction of justice.

c. If the Defendant has failed or should fail in any way to fulfill completely her obligations under this agreement, then the United States will be released from its commitment to honor all of its obligations to her. Thus, if at any time she should knowingly and willfully withhold evidence from the United

States investigators or attorneys prior to or during her testimony before grand juries or in trials, or commits any state or federal offense, then the United States will be free to: (1) prosecute her for perjury, false declaration, false statement, and/or obstruction of justice (18 U.S.C. Section 1621, 1623, 1001, 1503); (2) to prosecute her for all violations of federal criminal law which she has committed; (3) to use against her in all of those prosecutions and sentencing the Indictment and documents that she has herself disclosed or furnished to the United States during the course of her cooperation; (4) to recommend a maximum sentence; and (5) to seek forfeiture of any and all forfeitable properties of the Defendant. The parties agree to submit to the court, to be decided by a preponderance of the evidence standard, the question of whether Defendant has breached this agreement. Defendant further understands that upon any breach of this plea agreement, by the Defendant, she will not be entitled to withdraw her guilty plea in this case.

FACTUAL BASIS

On or about December 1, 2006, in Montgomery County, within the Middle District of Alabama, SIMONETTA GARTH, defendant herein, having been convicted of a felony, a crime punishable by imprisonment for a term exceeding one year under the laws of the State of Alabama, to-wit:

See
May 5, 2003 - Theft of property, second degree

1) ~~December 4, 2002, Shoplifting, in the Circuit Court of Lee County, Alabama, # 2003-464~~ *cd*

did knowingly possess in and affecting commerce a firearm, to-wit: a Sig Saur 9mm pistol and a Master Arms .45 caliber pistol. All in violation of Title 18, United States Code, Section 922(g)(1).

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

Understanding that 18 U.S.C. § 3742 provides for appeal by a Defendant of the sentence under certain circumstances, the Defendant expressly waives any and all rights conferred by 18 U.S.C. § 3742 to appeal the sentence. Defendant further expressly waives the right to appeal the sentence on any other ground and waives the right to attack the sentence in any post-conviction proceeding.

The United States does not waive its right to appeal any order dismissing the Indictment, vacating a sentence, or otherwise terminating the prosecution at any stage of the proceedings. Further, the parties agree that nothing in this agreement shall affect the United States's right and/or duty to appeal as set forth in 18 U.S.C. § 3742(b).

DEFENDANT'S UNDERSTANDING AND ACKNOWLEDGMENT

4. The Defendant, before entering a plea of guilty to Count 1 of the Indictment as provided for herein by said Plea Agreement, advises the Court that:

a. The discussions between the attorney for the United States and the attorney for the Defendant towards reaching an agreed plea in this case have taken place with the Defendant's authorization and consent.

b. Defendant acknowledges that a breach of this federal plea agreement will not entitle her to withdraw her guilty plea in this case. Defendant understands and acknowledges that Defendant's guilty plea will remain in full force and effect upon any breach of this agreement by the Defendant.

c. The Defendant further understands that, pursuant to 18 U.S.C. § 3013, said \$100.00 assessment fee is to be paid by the Defendant on the date of sentencing. The Defendant will make an honest, good faith effort to pay said fee as directed by the Financial Litigation Section of the United States Attorney's Office. The Defendant further understands that by completing the financial statement, the Defendant is representing that it is true and accurate to the best of the Defendant's information, knowledge, and belief.

d. The Defendant understands that the Defendant has a right to be represented by an attorney at every stage of the proceedings against the Defendant herein and is represented by the Defendant's undersigned attorney.

e. The Defendant understands that the Defendant has the right to plead not guilty and has the right to be tried

by a jury and, at a trial thereof, has the right to the assistance of counsel, the right to confront and cross-examine witnesses against the Defendant, the right to call witnesses in the Defendant's own behalf, and the right not to be compelled to incriminate the Defendant, and that if the Defendant enters a plea of guilty herein, there will not be a further trial of any kind and that by the entry of such a plea, the Defendant waives the right to a trial by jury or to a trial before the Court.

f. The Defendant further understands that in entering a plea of guilty herein, the Court may ask questions about the offense to which the plea is entered and further understands that if the Defendant answers these questions under oath, on the record, and in the presence of counsel, which questions and answers would be recorded, that the answers may later be used against the Defendant in a prosecution for perjury or false statement if the answers are not truthful.

g. The Defendant further understands and advises the Court that the Plea Agreement as set forth herein and the plea to be entered by the Defendant as a result thereof is voluntary on the Defendant's part and is not the result of any force or threats or of any promises apart from the aforesaid Plea Agreement. The Defendant further advises the Court that the Plea Agreement set forth herein is the result of prior discussions between the attorney for the United States and the attorney for

the Defendant, all conducted with the Defendant's authorization, knowledge, and consent.

h. The Defendant further advises the Court that the Defendant's understanding of this Plea Agreement is as set forth in this document.

i. The Defendant further advises the Court that it is understood that the United States can only make a recommendation which is not binding on the Court.

j. The Defendant further advises the Court that the Defendant understands and has been advised that evidence of a plea of guilty, later withdrawn or an offer to plead guilty to the crime charged in the Indictment herein, or of statements made in connection with and relevant to said plea or offer to plead, shall not be admissible in any civil or criminal proceedings against the Defendant. However, the Defendant does understand that evidence of a statement made in connection with and relevant to a plea of guilty, later withdrawn, or an offer to plead guilty to the crimes charged in the Indictment herein, is admissible in a criminal proceeding for perjury or false statement when the statement was made by the Defendant under oath, on the court record, and in the presence of counsel.

k. The Defendant is satisfied that defense counsel has been competent and effective in representing Defendant.

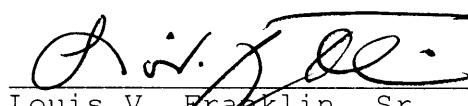
5. The undersigned attorneys for the United States and for the Defendant represent to the court that the foregoing Plea Agreement is the agreement of the parties that has been reached pursuant to the Plea Agreement procedure provided for in Rule 11, Federal Rules of Criminal Procedure, as Amended. The attorney for the Defendant further advises the Court that the Defendant has been advised of the nature of the charge to which the foregoing described plea is to be offered, and that the Defendant has been advised of the Defendant's right to plead not guilty and to be tried by a jury on all issues herein; of the maximum possible penalty provided by law; that by the entering of a plea of guilty as aforesaid, the Defendant waives the right to be tried by a jury or by the Court, waives the right to confront and cross-examine witnesses against the Defendant and the right not to be compelled to incriminate the Defendant; and that if the Defendant pleads guilty, there will not be a further trial of any kind. Further, the Defendant has been advised that if the Defendant pleads guilty, the Court may ask questions about the offense to which the Defendant has pleaded and that if the plea is rejected or later withdrawn, that the answers to such questions may not be used against the Defendant in a civil or criminal proceeding, but that the Defendant's answers may later be used against the Defendant in a prosecution for perjury or false statement if the answers are not truthful.

6. The Defendant understands that the U.S. Probation Office will prepare a presentence investigation report for the Court. The Probation Officer will consider the Defendant's conduct related to the offense to which the plea is offered, as well as the Defendant's criminal history. The offense level or criminal history category, as calculated by the Probation Officer and determined by the court, may differ from that projected by Defendant's counsel or the U.S. Attorney. In the event that the Court determines the Defendant's offense level or criminal history category is higher than the Defendant anticipated, the Defendant will not have the right to withdraw the plea on that basis.

This 16th day of June, 2007.

Respectfully submitted,

LEURA G. CANARY
UNITED STATES ATTORNEY



Louis V. Franklin, Sr.

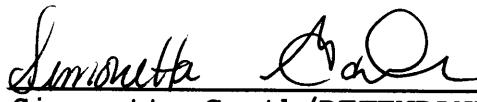
Criminal Chief



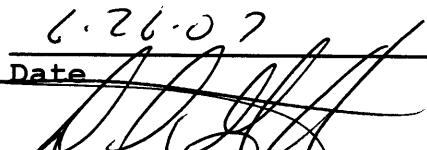
Verne H. Speirs
Assistant United States Attorney
One Court Square
Suite 201
Montgomery, Alabama 36104

I have read the foregoing Plea Agreement, understand the same, and the matters and facts set forth therein accurately and correctly state the representations that have been made to me and accurately set forth the conditions of the Plea Agreement that has been reached.

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE AND CORRECT AND THAT I AM SATISFIED THAT I HAVE RECEIVED COMPETENT ADVICE AND REPRESENTATION FROM MY DEFENSE COUNSEL, _____.

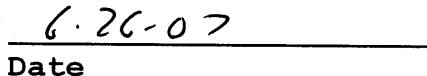


Simonetta Garth/DEFENDANT



Date

Daniel Hamm
Attorney for the Defendant



Date